SERVED: July 18, 1996

NTSB Order No. EA-4469

## UNITED STATES OF AMERICA NATIONAL TRANSPORTATION SAFETY BOARD WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD at its office in Washington, D.C. on the 17<sup>th</sup> day of July, 1996

DAVID R. HINSON,

Administrator, Federal Aviation Administration,

Complainant,

v.

ARTHUR F. PRIOR,

Respondent.

Docket SE-13943

## ORDER DENYING STAY

Respondent, <u>pro se</u>, has requested a stay of NTSB Order No. EA-4416, served January 16, 1996, pending review of that order by the United States Court of Appeals for the Ninth Circuit pursuant to Section 1006 of the Federal Aviation Act (49 U.S.C. 46110).

Board Order EA-4416 affirmed a 300-day suspension of respondent's commercial pilot certificate based on respondent's violation of 14 C.F.R. §§ 91.119(a) and (b), and 91.13(a), for operating a hot-air balloon in low flight over the city of Escondido, California, on February 28, 1994. The suspension was to have taken effect 30 days after the date of service. Respondent, however, filed a petition for reconsideration, which stayed the order's effective date. Thereafter, the Board denied reconsideration by NTSB Order No. EA-4448, served April 30, 1996. The suspension took effect on May 30, 1996.

Under NTSB Rule 821.64(b), "[n]o petition for stay pending judicial review will be entertained if it is **received** by the Board after the effective date of the Board's order." (Emphasis added.) Respondent's request was mailed on May 28, 1996, but was not received by the Board until June 3, 1996. No explanation was offered for the late filing and none is apparent to us. Therefore, as stated in NTSB Rule 821.64(b), we will not entertain the request for stay.

## ACCORDINGLY, IT IS ORDERED THAT:

Respondent's request for stay is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

If a stay action is to be timely, any petition must be filed sufficiently in advance of the effective date of the Board's order to allow for the possibility of a reply and to allow for Board review.

49 C.F.R. § 821.64(b).

<sup>&</sup>lt;sup>1</sup> Rule 821.64(b) further states:

Nevertheless, we note that, given our findings of serious violations by respondent, a stay would have been contrary to the interests of aviation safety and would not have been granted. While we generally grant stays of Board orders pending judicial review when the suspension affirmed is for a period of less than six months, we invariably deny stays in cases involving certificate revocation because revocation is based on a conclusion that the airman lacks the qualifications required of a certificate holder. Cases involving suspensions of six months or more are evaluated on a case-by-case basis, considering the seriousness of the violations. See, e.g., Administrator v. Powell, NTSB Order EA-4328 (1995); Administrator v. Ciampa, NTSB Order EA-4291 (1994).